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Leo J. Weissert
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-171885.15

DATE: May 10, 1978

MATTER OF: Leo J. Weissert - Retroactive Salary
Adjustment - Appeal of Claims Settlement

DIGEST: Downgraded employee's claim for retroactive salary adjustment because he continued to perform the duties of the previous higher level position was disallowed by our Claims Division as unauthorized by law. Upon appeal of settlement, claimant alleges an illegal detail under our Turner-Caldwell decision 55 Comp. Gen. 539. Employee does not satisfy Turner-Caldwell criteria inasmuch as he had an accretion of higher level duties to lower level position, which was remedial only through a classification appeal that was denied. Disallowance is sustained.

This action involves a reconsideration of a Settlement Certificate dated July 23, 1975, issued by our Claims Division on claim number Z-2564147, requested by Mr. Leo J. Weissert, a Department of the Army civilian employee, for a retroactive salary adjustment. Our settlement disallowed Mr. Weissert's claim.

The record indicates that on October 17, 1971, Mr. Weissert received a reduction in grade from Accountant, grade GS-11, to Accountant, grade GS-9, as a result of a reorganization of his activity. He was placed in a "saved pay" status under 5 U. S. C. § 5337 and retained his grade GS-11 salary for the allowable 2-year period ending October 16, 1973. The employee contended in his claim that when he was reduced in grade he continued to perform duties associated with higher level positions until he was promoted to a grade GS-11 position effective January 19, 1975. The claimant points out that he kept on performing these higher level duties even after his GS-11 "saved pay" terminated on October 16, 1973, until his promotion in 1975. Hence, Mr. Weissert contended in his original claim that he should be given a retroactive pay adjustment for the difference between the salary of a grade GS-9 position and that of a grade GS-11 position between October 16, 1973, and January 19, 1975.

Our Claims Division disallowed Mr. Weissert's claim on the basis that such retroactive salary adjustment was not authorized

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by law. The claimant has now requested us to review the settlement and to consider the period between October 16, 1973, and January 19, 1975, that he served in a grade GS-9 position and allegedly performed the duties of a grade GS-11 position, as an illegal detail under our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975). That decision held that an employee who is detailed to a higher grade position for an extended period without approval from the Civil Service Commission is entitled to a retroactive promotion with backpay from the 121st day of the detail until it is terminated. However, a review of Mr. Weissert's situation indicates that he does not qualify for the remedy sanctioned by our Turner-Caldwell decision, supra. Civil Service Commission implementing regulations contained in Bulletin No. 300-40, Subject: "GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183083)" dated May 25, 1977, provides guidance on the issue raised by Mr. Weissert. Paragraph 4 of the Bulletin reads as follows:

"4. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level. As the decision notes, the Supreme Court recently ruled in United States v. Testan [424 U. S. 392 (1976)] that classification actions upgrading a position may not be made retroactive so as to entitle an incumbent to backpay. Care must be taken to distinguish between employee claims based on details to higher graded positions, and to claims based on a classification action; only the former may be considered for retroactive correction under the decision."

Mr. Weissert was not temporarily assigned to an established grade GS-11 position as required above. Rather, while serving in a grade GS-9 position, he alleges that he was required to perform additional duties normally associated with grade GS-11 positions. This situation does not involve a detail to another established higher level position, but involves the accretion of higher level duties to the lower level position. Hence, the question that is raised involves

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the appropriateness of Mr. Weissert's position classification at the grade GS-9 level in light of the alleged performance of higher level duties. The exclusive remedy available to Mr. Weissert was a classification appeal under the provisions of 5 C.F.R. Part 511 while he occupied the position. He exercised this appeal right which culminated in a denial of the appeal of his position classification by letter dated February 27, 1974, from the Civil Service Commission.

In view of the foregoing, we must sustain the settlement issued by our Claims Division that disallowed Mr. Weissert's claim.


Deputy Comptroller General
of the United States